

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Avenue
Dallas, Texas 75202

FILED

1994 SEP 28 AM 7:40

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:) Docket No. SARA 6-94-049
)
Astro Plating)
915 Roosevelt Avenue) Administrative Complaint
San Antonio, Texas 78210) under the Emergency
Planning and Community
Respondent) Right-to-Know Act (Section 312)

ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY FOR HEARING

This Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 325(c) of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRTKA"), 42 U.S.C. § 11045(c). The Administrator has delegated this authority under EPCRTKA to the EPA Regional Administrators. The Regional Administrator of EPA Region 6 has delegated this authority under EPCRTKA to the Director, Environmental Services Division. The Director, Environmental Services Division, EPA Region 6 ("EPA" or "Complainant"), issues this Complaint against Astro Plating ("Respondent") for violations of Section 312 of EPCRTKA.

PRELIMINARY STATEMENT

1. Respondent is doing business at 915 Roosevelt, San Antonio, Bexar County, Texas (the "Facility").
2. Respondent is a firm, and therefore a "person" as defined under EPCRTKA § 329(7), 42 U.S.C. § 11049(7).

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3. At all times relevant to this Complaint, Respondent owned and/or operated the Facility.

4. Respondent is the owner and/or operator of a "facility" as that term is defined at EPCRTKA § 329(4), 42 U.S.C. §11049(4), and 40 CFR § 372.3.

5. EPCRTKA § 312(a), 42 U.S.C. § 11022(a), and the regulations found at 40 CFR § 370.20, provide that the owner or operator of a facility required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act ("OSHA") of 1970, 29 U.S.C. § 651, shall submit to the Local Emergency Planning Committee ("LEPC"), the State Emergency Response Commission ("SERC"), and the local fire department with jurisdiction over the facility, by March 1, 1988 (and annually thereafter), a completed emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 CFR § 370.20) containing the information required by 40 CFR § 370.20.

6. Sulfuric acid (Chemical Abstract Service #7664-93-9) is a hazardous chemical subject to the MSDS requirements of OSHA.

7. Sulfuric acid is a hazardous chemical as defined at EPCRTKA § 329(5), 42 U.S.C. § 11049(5).

8. The threshold quantity, as that term is defined at EPCRTKA § 312(b), 42 U.S.C. § 11022(b), for a hazardous chemical is 500 pounds, as set forth in 40 CFR § 370.20.

VIOLATION - COUNT 1

9. Paragraphs 1 through 8 are incorporated herein by reference.

10. During calendar year 1993, Respondent had a hazardous chemical present at the Facility.

11. Pursuant to OSHA, and regulations promulgated thereunder, Respondent was required to prepare, or to have available, an MSDS for hazardous chemicals present at the Facility during the calendar year 1993.

12. The quantities of a hazardous chemical present at the Facility during the calendar year 1993 were, on occasion, in amounts equal to or greater than the threshold quantity established for the hazardous chemical in 40 CFR § 370.20.

13. Respondent failed to submit by March 1, 1994 a completed emergency and hazardous chemical inventory form with respect the hazardous chemical located at the Facility to:

- (a) the San Antonio Fire Department Fire Department;
- (b) the SERC, Texas Department of Health; and
- (c) the Bexar County LEPC.

13. Therefore, Respondent violated of the reporting requirements of EPCRTKA § 312(a), 42 U.S.C. § 11022(a), and is subject to the assessment of penalties under EPCRTKA § 325(c), 42 U.S.C. § 11045(c).

PROPOSED PENALTY

Pursuant to § EPCRTKA 325(c), 42 U.S.C. § 11045(c), EPA is authorized to assess a civil penalty by Administrative Order not to exceed \$25,000.00 per day for each day a violation continues under EPCRTKA § 312, 42 U.S.C. § 11022. Section 325 also states that in calculating the penalty, the following shall be considered: the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. Complainant, taking into consideration the factors required by Section 325, proposes a civil penalty against Respondent of **Sixty-six Hundred Dollars (\$6,600.00)** for violation of EPCRTKA § 312.

Payment of the penalty must be made by cashier's or certified check made payable to the Treasurer of the United States and shall be mailed to:

Regional Hearing Clerk (6C)
U.S. EPA, Region 6
P.O. Box 360582M
Pittsburgh, PA 15251

Docket No. SARA 6-94-045 should be clearly typed on the check to ensure proper credit.

Respondent shall send simultaneous notice of the penalty payment, including copies of the cashier's check or certified check, to the following:

Mr. Steve Mason
Contingency Planning Section (6E-EP)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

Respondent's adherence to these procedures will ensure proper credit when payments are received.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Within 20 days of service of this Complaint, Respondent may request a hearing on the Complaint before an EPA Administrative Law Judge to contest any material fact or the penalty amount. To request a hearing, Respondent must file a written Answer within twenty (20) days of receipt of this Complaint. The Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer shall contain: (1) a statement of the facts which constitute the grounds of a defense, (2) a concise statement of the facts which Respondent intends to place at issue in the hearing, and (3) whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. If Respondent fails to file a written Answer within twenty (20) days of receipt of this Complaint, such failure shall constitute

an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to Answer within twenty (20) days may result in the filing of a Motion for Default. The Default Order may impose the penalties proposed herein without further proceedings.

Any hearing requested will be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 CFR Part 22 ("Consolidated Rules"), a copy of which is provided. Respondent must send its Answer and any request for a hearing to:

Regional Hearing Clerk
Office of Regional Counsel (6C)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to Steve Mason, the Enforcement Officer assigned to represent EPA in this matter, at:

Mr. Steve Mason
Contingency Planning Section (6E-EP)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202
(214) 665-2292

If Respondent fails to request a hearing within the designated time period or fails to appear at a hearing, EPA may issue a Final Order assessing the proposed administrative penalty. In accordance with EPCRTKA § 325(f), 42 U.S.C. 11045(f), Respondent may obtain review of any Final Order

concerning the count alleged under EPCRTKA by filing a notice of appeal in the appropriate District Court of the United States within 30 days from the date of such Final Order and by simultaneously sending a copy of such notice by certified mail to the EPA Administrator.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case and to arrive at a settlement. To request an informal settlement conference, please write to or telephone:

Mr. Steve Mason
Contingency Planning Section (6E-EP)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202
(214) 665-2292


Please note that a request for the scheduling of, or participation in, an informal settlement conference does not extend the twenty (20) day period during which a written Answer and Request for Hearing must be filed as set forth above. The informal settlement conference procedure, however, may be pursued simultaneously with the adjudicatory hearing procedure.

The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of an informal conference. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The Consolidated Rules prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, Judicial Officer, Regional Administrator, Regional Judicial Officer, or the Administrative Law Judge after issuance of a Complaint. From the date of this Complaint until the final Agency decision in this case, neither the Administrator, Judicial Officer, Administrative Law Judge, Regional Administrator, nor the Regional Judicial Officer, shall have any ex parte communication with the EPA trial staff or the Respondent on the merits of any issues involved in this proceeding.

Date: _____



Russell F. Rhoades
Director
Environmental Services Division (6E)
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

This certificate of Service is to certify that on the 28
day of September, 1994,

(1) the original of this Administrative Complaint was filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 6, Dallas, Texas, and

(2) a true and correct copy of the foregoing Administrative Complaint was placed in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows:

Mr. Daniel Salinas
Astro Plating
915 Roosevelt Avenue
San Antonio, Texas 78210

9/28/94

Date

Steve Mason

Mr. Steve Mason
Contingency Planning Section (6E-EP)
U.S. EPA Region 6 (6C)
1445 Ross Avenue
Dallas, Texas 75202

RESPONDENT: Astoria Plating
San Antonio, Texas

ADMINISTRATIVE RECORD: SARA 6-94-049



**** **CONFIDENTIAL** ****

** ENFORCEMENT SENSITIVE **

PLEASE SEE ENFORCEMENT COORDINATOR BEFORE VIEWING FILE